

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARVIN L. NIES,

Plaintiff,

v.

BRIAN DICIANO, TEMO GONZALEZ,
D&G FARMS, and DOES 1-10,

Defendants.

CIV-S-03-1991 DFL GGH

MEMORANDUM OF OPINION
AND ORDER

Plaintiff Martin Nies seeks enforcement of a settlement agreement and to recover \$3,000 in sanctions against defendants Brian DiCiano and Temo Gonzalez (collectively "defendants"). For the reasons set forth below, the court holds that defendants are jointly and severally liable to pay Nies \$15,000 and awards Nies \$2,500 in sanctions against Gonzalez.

I.

This action arises out of the alleged improper use of a patented tree. On August 3, 2005, after months of negotiations between the parties, defendants' counsel contacted Nies's counsel

1 and offered to settle the case for \$15,000. (Pl.'s Mot. at 2.)
2 Plaintiff accepted the offer. (Id.) However, defendants refused
3 to execute the written settlement agreement. (Id.)

4 Nies contends that the agreement is binding on defendants
5 because: (1) DiCiano admitted that defendants authorized their
6 attorney to offer to settle the matter for \$15,000 under the
7 terms contained in the written agreement; and (2) DiCiano
8 contacted Nies's counsel and informed her that "he was agreeable
9 to the settlement." (Mendoza Decl. ¶ 14.)

10 At oral argument, the court heard sworn testimony from
11 DiCiano. DiCiano stated that after conferring with Gonzalez and
12 receiving Gonzalez's approval, he authorized defendants' counsel
13 to make the settlement offer. He also stated that he had offered
14 to pay Nies half of the settlement amount. Although Gonzalez
15 received notice of the court's warning that his failure to appear
16 at the hearing or oppose the motion could result in an award of
17 sanctions against him, Gonzalez did not oppose the motion or
18 appear at the hearing.

19 II.

20 A. Motion to Enforce Settlement

21 "It is well settled that a District Court has the equitable
22 power to enforce summarily an agreement to settle a case pending
23 before it." Callie v. Near, 829 F.2d 888, 890 (9th Cir. 1987).
24 However, courts can only enforce agreements that have no disputed
25 terms. Id. In addition, if an attorney agrees to a settlement
26 on behalf of a client, the agreement is only binding on the

1 client if the attorney had the client's express permission to
2 enter into the agreement. Harrop v. Western Airlines, Inc., 550
3 F.2d 1143, 1144-45 (9th Cir. 1977) (citations omitted).

4 No party contests the existence or terms of the settlement
5 agreement. In addition, the court has received sworn testimony
6 indicating that defendants' counsel was authorized to make the
7 settlement offer. The court finds that DiCiano expressly
8 authorized the settlement on his own behalf, on behalf of the
9 partnership, and on Gonzalez's specific authorization.

10 Accordingly, the settlement agreement will be enforced.

11 B. Liability

12 DiCiano and Gonzalez executed a general partnership
13 agreement on October 1, 2000. According to DiCiano and
14 defendants' counsel, DiCiano expressly authorized defendants'
15 counsel to make the settlement offer on behalf of the
16 partnership. Because DiCiano is a general partner in the
17 partnership, the settlement agreement is binding on the
18 partnership.

19 In California, general partners are jointly and severally
20 liable for all debts and obligations of a partnership.¹ Cal.
21 Corp. Code § 16306; Kadota Fig Ass'n of Producers v. Case-Swayne
22

23 ¹ There are certain specific exceptions to this rule,
24 however, none are applicable here. See Cal Corp. Code §
16306(a)-(c).

25 Because DiCiano had authority to commit the partnership, it
26 was not necessary for Gonzalez to expressly agree to the
settlement. Nevertheless, as discussed in the preceding section,
the court finds that Gonzalez did give his consent to the
settlement.

1 Co., 73 Cal.App.2d 796, 801 (1941). Therefore, Nies may collect
2 the entire amount of the settlement agreement from DiCiano or
3 Gonzalez individually, or he may apportion the award between them
4 as he sees fit.

5 However, a partner who pays more than his proportional share
6 of an award is generally entitled to contribution from the other
7 partners. Cal. Corp. Code § 16401; Great Western Bank v. Kong,
8 90 Cal.App.4th 28, 33 (2001). The purpose of this rule is to
9 ensure that all partners bear the partnership's burdens equally.
10 Several California statutes outline the process for compelling
11 such contribution through the courts. See, e.g., Cal. Civ. Proc.
12 Code §§ 881-883. Therefore, although Nies is entitled to recover
13 the entire award from either defendant, there is a well-
14 established process in place to ensure that the debts of the
15 partnership are spread equally between the partners.

16 C. Sanctions

17 Nies requests an award of \$3,000 in sanctions. The court
18 possesses the inherent authority to sanction a party or an
19 attorney. Fink v. Gomez, 239 F.3d 989 (9th Cir. 1999). The
20 purpose of awarding sanctions is to "make the prevailing party
21 whole for the expenses caused by his opponent's obstinacy."
22 Hutto v. Finney, 437 U.S. 678, 690 n.14, 98 S.Ct. 2565 (1978).

23 Before granting a request for sanctions, the court must make
24 a finding of "bad faith." Gomez v. Vernon, 255 F.3d 1118, 1134
25 (9th Cir. 2001). A party "shows bad faith by delaying or
26 disrupting the litigation." Hutto v. Finney, 437 U.S. 678, 690

n.14, 98 S.Ct. 2565 (1978).

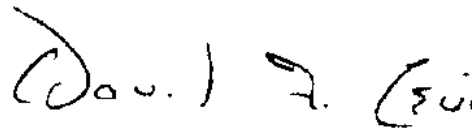
The court finds that Gonzalez has acted in bad faith. The record reveals that all parties were amenable to the settlement agreement when defendants' counsel made the offer to Nies. However, after Nies accepted the offer, Gonzalez decided to withhold his consent. Since then, he has refused to respond to Nies, Diciano, or his attorney. His conduct forced Nies to file this action and incur \$2,500 in additional attorney fees.² Therefore, the court awards Nies \$2,500 in sanctions to be paid by Gonzalez individually.³

III.

For the reasons stated above, the court GRANTS the motion to enforce the settlement agreement and awards Nies \$2,500 in sanctions payable by Gonzalez. The Clerk shall enter judgment.

IT IS SO ORDERED.

Dated: 12/20/2005



DAVID F. LEVI
United States District Judge

² Nies moved for \$3,000 in attorney's fees. However, \$500 of this amount was for the anticipated expense of filing a reply to defendants' opposition. Because defendants did not file an opposition, Nies did not incur this expense.

³ The record does not support a finding that DiCiano acted in bad faith.